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Attorneys for Union
SEIU, UNITED HEALTHCARE WORKERS – WEST

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 31

GOOD SAMARITAN HOSPITAL,

Employer,

v.

ALLEN SMITH,

Petitioner,

and

SEIU, UNITED HEALTHCARE WORKERS –
WEST,

Union.

) Case No. 31-RD-1555

) **SEIU, UNITED HEALTHCARE
WORKERS –WEST'S RESPONSE TO
THE EMPLOYER'S OBJECTION TO
THE UNION'S ANSWERING BRIEF**

) Judge: Lana H. Parke

SEIU, United Healthcare Workers – West responds briefly to the employer's objection to its answering brief. Contrary to the employer's counsel's claim, Section 102.114(i) of the Board's Rules and Regulations do not mandate rejection of an untimely served Answering brief. Indeed, the Board has discretion to either reject the document or withhold or reconsider any ruling on the subject matter raised by the document until after service has been made and the served party has had a reasonable opportunity to respond. Section 102.114(c)(1), (2) of the Board's Rules and Regulations. The Union timely filed its brief, but inadvertently initially mailed, instead of emailed its brief to the employer's counsel; the next day, Union counsel notified the employer of the

1 inadvertent error, and immediately emailed a copy of the Answering brief to the employer's
2 counsel. Because there is no prejudice to the employer, given that it was an Answering brief that
3 was filed and the error was immediately corrected, the Union respectfully requests that the Board
4 should exercise its discretion and not strike the Union's Answering brief.

5 After receiving the Union's Answering brief, via email, and after a tactical determination,
6 the employer fired off an email, which essentially stated that it would be objecting to the Union's
7 Answering brief because it was not timely served. (Exh. A. to Ers. Objection). In addition, the
8 employer made various untruthful claims, which it has repeated in its Objection, stating that
9 Union's counsel had told employer's counsel that "all the other parties had been served via e-mail"
10 and that Union counsel did not provide any explanation for the error. Neither statement is true.

11 When I arrived into my office on April 29, 2009, I was informed by my secretary that she
12 had timely filed the Answering brief, but that she had mistakenly mailed rather than emailed the
13 Answering brief to the employer's counsel and to Region 31. I immediately called both Region 31
14 and the employer's counsel to inform them of the mistake, and to let them know that I would
15 immediately have emailed the Answering brief. At no time did I tell the employer that "all of the
16 other parties had been served via e-mail." And I also explained that it was a mistake, although I
17 did not go into detail, nor was I asked to go into more detail.

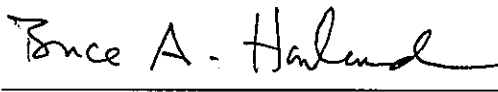
18 Moreover, the employer raises the fact that the Union did not serve Mr. Allen V. Smith via
19 e-mail. The employer also claims that the Union routinely communicates with Mr. Smith via e-
20 mail. First, Mr. Smith has not raised any objection to the Union's brief. Second, Mr. Smith did
21 not file any Exceptions or an Answering brief, and, therefore, is not prejudiced. Third, the parties
22 did not routinely communicate via email. In fact, the employer in this proceeding did not even
23 serve its post-hearing via email on Mr. Smith, although it served it on the Union and Region 31 via
24 email. (See Exh. A.) Finally, although the employer attempted to serve Mr. Smith with
25 Exceptions via email, the email address that the Exceptions were sent to was the wrong address.
26 (See Exh. B. (mistakenly sending its Exceptions to drsmith007@hotmail.com instead of
27 presumably drsmith007@hotmail.com)).

28 A bright line rule of rejecting documents that were not timely served because of such

1 mistakes is inappropriate and does not serve the purpose of the Rule and Regulation. The same is
2 true in this situation, where immediately after discovering the error, the Union notified all of the
3 affected parties and remedied the error as quickly as possible. There is no prejudice to the
4 employer or the petitioner in this case, especially since the Board has taken no action and has made
5 no decision with respect to the employer's Exceptions. Therefore, the Union respectfully requests
6 that the Board consider the Union's Answering brief.

7 Dated: May 1, 2009

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

9 By: 

10 BRUCE A. HARLAND
Attorneys for Union

11 114020/529321

Bruce Harland

From: Day, Tiffany [TD@JMBM.com]
Sent: Thursday, March 19, 2009 1:03 PM
To: Bruce Harland
Cc: Fernandez, Marta M.; Arnold, Barbra
Subject: Good Samaritan/SEIU - 31-RD-1555
Attachments: 20090319114550_TD.PDF

Attached please find Good Samaritan Hospital's Post-Hearing Brief in Support of Objections to Election in the above matter. A hard copy will follow by regular mail.

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EXHIBIT A

4/30/2009

Bruce Harland

From: Day, Tiffany [TD@JMBM.com]
Sent: Tuesday, April 21, 2009 3:34 PM
To: drsmith007@hotmail.com; Steve.Alduenda@nrlb.gov; Bruce Harland
Cc: Fernandez, Marta M.; Arnold, Barbra
Subject: Good Samaritan/Allen Smith and SEIU
Attachments: employerexceptionsbrief.PDF

Attached please find Employer's Exceptions to Administrative Law Judge Lana Park's Report and Recommendations on Objections and Brief in Support Thereof.

<<employerexceptionsbrief.PDF>>

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EXHIBIT B

PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On May 1, 2009, I served upon the following parties in this action:

Marta M. Fernandez
Barbra A. Arnold
Jeffer, Mangels, Butler & Marmaro LLP
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drsmith007@hotmail.com

Regional Director
NLRB, Region 31
11150 W. Olympic Blvd., Suite 700
Los Angeles, CA 90064-1824
tom.chang@nrlb.gov

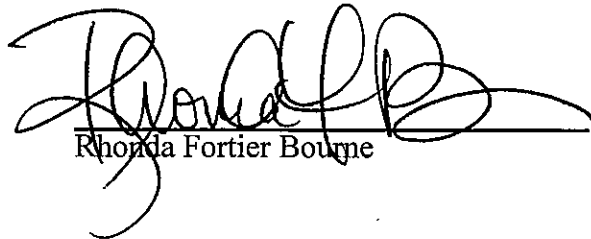
Lana Park, ALJ
Division of Judges
901 Market Street, Suite 300
San Francisco, California 94103-1779
lane.park@nrlb.gov

copies of the document(s) described as:

**SEIU, UNITED HEALTHCARE WORKERS --WEST'S RESPONSE TO
EMPLOYER'S OBJECTION TO THE UNION'S ANSWERING BRIEF**

- [X] **BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- [X] **BY EMAIL** I caused to be transmitted each document listed herein via the email address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on May 1, 2009.


Rhonda Fortier Bourne

114020/529339